"negotiation" consisted merely of a 60-second telephone conversation with an unidentified person during which no terms were discussed, the lack of candor would be undeniable. But Glendale has no such evidence. In fact, it has no evidence at all, because it refrained from asking Mrs. Duff to describe the negotiations. In these circumstances, an intent to deceive is impossible to find. (¶202 above.)

214. Moreover, Glendale's argument rests on the fallacious premise that no negotiation occurred because Mrs. Duff had access to cash collateral from TBN "which would enable virtually anyone to have 'negotiated' a loan." (Glendale PFCL I ¶636.) There is no basis for suggesting that a loan negotiation occurs only if the borrower is in a weak bargaining position. The letter of credit is four pages long, includes various terms, and is hardly the kind of document a bank would issue without meeting with the borrower. (MMB Ex. 334.) Mrs. Duff's testimony is not at all questionable, and Glendale's accusation that she lacked candor is reckless speculation.

215. Glendale/SALAD's charge that Dr. Crouch, Mrs. Duff, and Mr. May lacked candor about the significance of Joseph Dunne's October 1, 1991, letter dissolves once it is recognized that the letter did not cause the events that Glendale/SALAD say it caused. (See ¶¶67-69 above.) The premise of the argument is that Mr. Dunne's letter is what caused NMTV to adopt his recommendation and add Pastor Hill to the Board "the day after

his letter was written." (Glendale PFCL I ¶636.) In fact, the process of adding Pastor Hill to the Board was well in progress before Mr. Dunne wrote his letter. (¶69 above.) Moreover, Glendale/SALAD questioned no witness about the scheduling of the meeting on October 2, 1991. Their assumption that it was scheduled in response to Mr. Dunne's letter is pure conjecture. Having given the witnesses no chance to address that matter, Glendale/SALAD cannot properly charge intentional lack of candor. (¶202 above.)

216. Glendale/SALAD also mischaracterize the record when they charge that Colby May lacked candor because he allegedly stated that he "included NMTV in his bill to Trinity Broadcasting Network so that he could pass the cost saved to NMTV (a 'cost saving' amounting to one piece of paper, one envelope and one stamp)." (Glendale PFCL I ¶636.) That contention is inaccurate and unfair. Mr. May testified that he sent legal bills to Paul Crouch at TBN because "I knew that TBN provided accounting services for NMTV. I also understood that TBN charged to NMTV the itemized billings of NMTV that it paid." (TBF Ex. 105, p. 6.) Mr. May reiterated this point at the hearing during cross-examination. (Tr. 3333-34.) Glendale/SALAD seize upon that part of his testimony where he said that sending a separate bill to NMTV is "not so simple, I mean, every time you generate the smallest piece of paper in a small office like I have, it impacts overhead and these things do have a cumulative impact in a week, in a month, six months,

over time." (Tr. 3333.) However, read together with the rest of his testimony, that statement cannot fairly be read to mean that Mr. May sent joint billing statements to TBN and NMTV solely to save the cost of a stamp, an envelope, and a piece of paper. Reviewing the same evidence, the Mass Media Bureau proposes the following findings:

> "By billing in this fashion, May could keep his administrative costs down, and TBN's accounting department could still keep track of the amounts expended on behalf of each company.... He also claims that he sent NMTV's bill to TBN because he knew TBN was providing accounting services for NMTV. Tr. 2844, 3327-9." (MMB PFCL ¶¶40, 128.)

That is a fair interpretation of the record. Glendale/SALAD's is not.

217. Several arguments raised by Glendale/SALAD concern alleged lack of candor in the Wilmington proceeding and subsequent filings. (Glendale PFCL I ¶¶630-36; SALAD PFCL ¶¶90-140.) Those arguments lack merit for several reasons. First, Glendale/SALAD failed to establish any evidence of a willful intent to deceive. (¶203 above.) Second, the arguments are erroneous; NMTV made substantial disclosures which belie the

notion that anyone lacked candor.[34/] Third, the arguments are misleading and do not accurately describe what occurred.[35/]

218. NMTV and TBF's filings disclosed far more than Glendale/SALAD are willing to acknowledge. Of course, no amount of disclosure would have satisfied Glendale/SALAD. Whatever disclosures had been made, Glendale/SALAD would have found fault. Their contentions must be discounted as patently biased. Moreover, as the Presiding Judge observed during the proceeding, the presentation of information arises in specific contexts, and the fact that additional information is later presented when the context changes in no way signifies that the earlier presentation was intentionally deceptive. (Tr. 5432-33.)

34/ It is noteworthy that the Mass Media Bureau, which specifically requested some of the NMTV submissions on which Glendale/SALAD rely, does not contend that the submissions intentionally lacked candor. To the contrary, the Bureau concludes that "the evidence does not support a conclusion that Crouch, TBN, or NMTV intended to deceive the Commission." (MMB PFCL ¶310.)

35/ When it last made similar allegations that TBF pleadings lacked candor, Glendale detached 85% of the allegedly uncandid document and gave TBN's witness only the other 15%. Compare Glendale Ex. 220 with TBF Ex. 120. This forced TBN's witness during cross-examination to search his memory about what he had written two years earlier, rather than being able to refer to the complete document. (Tr. 3176-77.) When the full documents were presented on redirect examination (TBF Exs. 120 and 121), the facts looked totally different. Indeed, the documents disclosed so much about Jane Duff's role at TBN that the Presiding Judge questioned why the parties could not have proceeded by stipulation. (Tr. 3519, 3526-27.) By detaching material parts of the document it used during cross-examination, Glendale was misleading the witness and the court. Its current lack of candor allegations take the same approach. (See, e.g., ¶¶49, 56-57, 59-60, 62, 70 above.)

219. Glendale/SALAD's contention that NMTV's opposition to the Wilmington petition to deny lacked candor must fail for two fundamental reasons: (a) the petition itself is not part of the record, so the context in which the opposition was submitted cannot be assessed; and (b) Glendale/SALAD did not examine the principals of NMTV and TBN on this matter and thus gave them no chance to explain their intentions. Accordingly, Glendale/SALAD are left exactly where they were when the HDO was adopted -- without the "prima facie showing of intent to deceive" that is needed for a lack of candor finding. (¶¶202-03 above.)[36/]

220. Contrary to Glendale/SALAD's argument (Glendale PFCL I ¶¶630, 633; SALAD PFCL ¶94), NMTV's September 1991 response to the Mass Media Bureau's inquiry, its Request For Declaratory Ruling, and TBF's opposition to the Miami petition to deny were very open regarding the relationship between NMTV and TBN. (TBF Ex. 120, 121; Tr. 3511-27; see also n. 35 above.) Among other things, those pleadings: (a) described Mrs. Duff's roles for both companies and that her offices were at TBN headquarters;

36/ By proceeding as they have, Glendale/SALAD fail to reveal that the principal element of their argument -- that NMTV did not state in its opposition that TBN had collateralized the Wilmington letter of credit (Glendale I PFCL ¶631; SALAD PFCL ¶93) -- is taken completely out of context. The pertinent argument the petitioner had made, and to which NMTV was responding, was that NMTV was not financially qualified. In that context, NMTV established that it had a valid letter of credit. What Glendale/SALAD are doing is transmuting subsequent events back to the time of the Wilmington opposition to concoct the appearance of lack of candor that, in context, did not exist. Such mischaracterization of events cannot support a lack of candor finding.

(b) disclosed that most NMTV officers were salaried TBN employees; (c) disclosed that NMTV relied on financing from TBN which it repaid with revenues from a TBN affiliation agreement; (d) and disclosed that NMTV used the same engineers and attorneys as TBN and generally shared the same agents. (Id.) The fact that those disclosures prompted the Bureau to request more details does not show that the disclosures were intentionally uncandid. As noted above, Glendale/SALAD conducted little inquiry to ascertain the intentions of the persons who prepared the documents, and those persons have had no chance to explain the discrepancies that Glendale/SALAD allege. Accordingly, no intent to deceive has been shown.[37/]

[37/] Essentially acknowledging the overall openness of NMTV's and TBF's disclosures, Glendale/SALAD single out one clause from each pleading on which to build their case. However, concerning the statement about Pastor Hill in NMTV's Request For Declaratory Ruling (Glendale PFCL I ¶633), they conducted no examination on that statement, and the record therefore is barren about the origin and intent of the statement. Moreover, Pastor Hill's appearances on TBN are televised in full public view and are also included in TBN's published program schedules. (MMB Ex. 219, p. 4.) In these circumstances, an intent to conceal cannot reasonably be inferred. Christian Broadcasting of the Midlands, 2 FCC Rcd 6404, 6405 (1987) (an intent to deceive the Commission will not be found where a broadcaster "carried out the activity that it is accused of concealing in plain sight of its adversary"); Phoenix Media Corp., 2 FCC Rcd 498, 499-500 (1987) (issuance of a press release and trade publication containing the subject information are "inconsistent with an intent to conceal"). Glendale/SALAD's arguments that the disclosures regarding Pastor Aguilar lacked candor (Glendale PFCL I ¶333) derive from (a) their own misperception of Pastor Aguilar's overall involvement (¶¶110-15 above), (b) the fact that NMTV did not perceive that matter the way Glendale/SALAD describe it (Tr. 2406, 2411, 1520, 1527, 1534), and (c) Glendale/SALAD's failure to inquire specifically how or why those disclosures came to be made. Again, Glendale/SALAD have failed to establish a deliberate intent to deceive.

221. Glendale/SALAD's arguments that there was lack of candor about NMTV's corporate purposes, reliance on counsel, and the Odessa and Houston stations (Glendale PFCL I ¶634) are refuted in ¶¶26-36, 39-63, and 94-105 above. Similarly erroneous is the argument that Ben Miller's use of the title "consultant" for NMTV represented a willful lack of candor. The facts regarding Mr. Miller's activities, which Glendale/SALAD ignore, show that there are material differences between his limited assistance to NMTV and his overall supervision of TBN. (¶¶171-72 above.) The level of assistance he has provided to NMTV is fully consistent with the term consultant, and there is no evidence that he either adopted or was assigned that title to deceive anyone. Indeed, the Commission itself has determined that acting as a "watchdog" on technical matters, which is essentially Mr. Miller's role, is consistent with the title of "consultant." Stereo Broadcasters, Inc., 87 FCC 2d 87, 97-98 (1981). Also controlling is Margaret Garza, 1 FCC Rcd 51 (Rev. Bd. 1986), review denied, 3 FCC Rcd 2525 (1988), where an applicant asserted that she was employed as a teacher when she actually was a part-time student teacher and received no compensation. The Review Board held that such differences in interpretation as to a job title do not constitute intent to deceive. Id. at 52. See also Signal Ministries, Inc., 104 FCC 2d 1481, 1484-90 (Rev. Bd. 1986), review denied, 2 FCC Rcd 1259 (1988) (disagreements between witnesses as to station owner's

job title in job held earlier in her career did not show lack of candor).

222. Moreover, the notion that NMTV intended to conceal Mr. Miller's relationship is dispelled by the fact that NMTV reported his provision of engineering services in many applications to the Commission -- including the Odessa and Portland license applications and an application that described him as Technical Director. (TBF PFCL ¶203; Tr. 3556-58.) If NMTV meant to mislead, it could easily have left Mr. Miller's name off the applications and substituted a different name instead.

223. Glendale/SALAD allege that Pastor Espinoza "sought to evade inquiry" as to why Dr. Crouch was elected President of NMTV and only responded "when pressed." (Glendale PFCL I ¶28.) The words "sought to evade" and "when pressed" are carefully chosen to convey that Pastor Espinoza deliberately wanted to avoid responding. The testimony in which allegedly connived to conceal the truth is as follows:

> "Q. When Translator TV, Inc., was formed, Dr. Crouch was made President of the Company, correct?
>
> A. Yes, sir.
>
> Q. Why was Dr. Crouch made President of the company?
>
> A. Of TTI?
>
> Q. Yes.
>
> A. Mr. Schonman, I'm under the impression that it was at the first meeting. I did not attend that first meeting.

> Q. Did you have any understanding as to why he became President of TTI?
>
> A. I think it's more of an impression than an understanding. My feeling was that since he had the knowledge and the experience, and so this is something that I readily accepted." (Tr. 4308-09.)

It obviously did not take a great deal of "pressing" to elicit a response, and the Bureau, which conducted the examination, has not suggested that the response was uncandid. For Glendale/SALAD to make that charge based on that testimony is unconscionable.

224. Even more absurd is the motive Glendale/SALAD ascribe for Pastor Espinoza's alleged evasion. They contend that Pastor Espinoza wanted to avoid admitting that he "accepted" Dr. Crouch's election as President, when his written testimony stated that he "consented" to the election. According to Glendale/SALAD, the latter term "implies a degree of affirmative support that appears lacking from David Espinoza's testimony at hearing." (Glendale PFCL I ¶28.) The Mass Media Bureau misses this subtlety, since it finds that Pastor Espinoza "consented to all of the actions taken at TTI's first board meeting." (MMB PFCL ¶20.) And the Bureau's finding is hardly inaccurate, since Pastor Espinoza signed a document called "consent" to all business conducted at the meeting. (MMB Ex. 12.) Moreover, both Webster and Burton's Legal Thesaurus also miss Glendale/

SALAD's point, since they both define "consent" as "acceptance."[38/] To accuse Pastor Espinoza of egregious lack of candor with that kind of argument is likewise unconscionable.

225. Glendale/SALAD also attack Pastor Espinoza's written testimony that he told Mrs. Duff that acquiring a Portland station would be a "good idea" because of Portland's "growing Hispanic community." (TBF Ex. 106, p.20.) Glendale/SALAD describe this testimony as "merely verbiage put in David Espinoza's mouth after the fact" because at hearing "Espinoza did not recall the content of that conversation beyond [Mrs. Duff] advising him of another opportunity to buy a station." (Glendale PFCL I ¶111.)

226. As Glendale well knows, this testimony was not verbiage created by counsel after the fact. Rather, it was testimony that came directly from Pastor Espinoza. During his deposition in this proceeding, Pastor Espinoza stated:

> "The district that I belong to, the Pacific Latin American District of the Assemblies of God, had talked of the need for more churches in the State of Washington and in the State of Oregon. There was a growing influx of Hispanics moving into the State of Washington and the State of Oregon ... the President [of the District] was Doctor Miranda, he had in a sense challenged us about trying to start more works in the State of Washington and in the State of Oregon. I felt that Portland would be a good opportunity because, again, Doctor Miranda had mentioned the fact that there was a growing number of Hispanics in the

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38/ See Webster's II, New Riverside University Dictionary (1988 ed.) (defining "consent" as, inter alia, "acceptance"); William C. Burton, Legal Thesaurus (1980) ("consent" and "acceptance" synonymous).

area." (Espinoza Dep. Oct. 13, 1993, p. 67; emphasis added.)

Similarly, Pastor Espinoza's written testimony states:

> "I knew that Portland had a growing Hispanic community, because the president of an arm of my church, the Pacific Latin American District of the Assemblies of God, Dr. Miranda, had recently challenged us to start more works and churches in Washington and Oregon because of the increase in the number of Hispanics in the Pacific Northwest. In fact, a couple from my church had worked in Oregon and another couple worked in Washington. Both reported to me about the increasing number of Hispanics in the area that needed our ministry." (TBF Ex. 106, p. 20; emphasis added.)

Counsel knows nothing about Dr. Miranda and the Pacific Latin American District of the Assemblies of God. The written testimony was straight from Pastor Espinoza, and Glendale knows it.[39/]

227. Again charging that counsel concocted the testimony, Glendale/SALAD also question Pastor Espinoza's credibility about the circumstances of his resignation. (Glendale PFCL I ¶133.) Here too, however, the testimony is clearly Pastor Espinoza's own. At the hearing he was cross-examined about his written testimony, and his answers compared to his written testimony are revealing:

> "WRITTEN TESTIMONY: I began as a programmer and once a week, for over ten years, my name and my church had been associated with TBN because of the program broadcast on the network. (TBF Ex. 106, p. 15.)

39/ Furthermore, Pastor Espinoza's inability to remember the details of his conversation with Mrs. Duff does not prove that his written testimony was concocted by counsel. The conversation occurred more than six years ago, and the lack of such precise recollection is therefore understandable. (¶48 and n. 8 above.)

ORAL TESTIMONY: It's not so much a matter of being a director, but it was more a matter of....ten years as having my own host-my own program...." (Tr. 4392.)

* * * * *

"WRITTEN TESTIMONY: I had gotten to know many of the people at TBN as a programmer, and formed friendships and associations that blessed me spiritually and personally. (TBF Ex. 106, p. 15.)

ORAL TESTIMONY: It was more a matter of....meeting many wonderful people beyond Mr. Crouch and Jan, the camera people, just so many people.... When I get involved with someone, we can develop deep friendships and a lot of these people became good friends of mine...." (Tr. 4392-93.)

* * * * *

"WRITTEN TESTIMONY: Finally severing that connection was an emotional moment, and I thought of resigning from the NMTV Board as severing my last connection with those associations. (TBF Ex. 106, p. 15.)

ORAL TESTIMONY: It was somewhat of an emotional time for me in writing the letter....in many ways, I was severing my relationship to focus on my growing work in my own church. And so the explanation that I am making is that when I wrote the letter, it was a time of high feelings and much emotion....it was a very emotional letter for me, to write it. I was saying good-bye to friends." (Tr. 4392-93.)

* * * * *

"WRITTEN TESTIMONY: I knew, of course, which corporation's board on which I served, and knew that NMTV and TBN were different companies. (TBF Ex. 106, p. 16.)

ORAL TESTIMONY: I believe that in my letter of resignation, I make a statement that, in a sense, is incorrect." (Tr. 4392.)

There is no way that counsel could have (or would have) contrived testimony that could stand up so perfectly on cross-examination. The testimony is clearly Pastor Espinoza's own, and Glendale/SALAD's argument to the contrary is baseless.

228. Glendale/SALAD claim that Jane Duff gave misleading testimony by attributing negotiation of the Joy agreement to Dr. Crouch instead of herself so as to "disguise the fact that the terms of the agreement were determined by Trinity." (Glendale PFCL I ¶120.) Glendale/SALAD do not explain why she would try to deceive the Commission by putting the responsibility on Dr. Crouch, when the involvement of Dr. Crouch is the very issue in this case, and when Dr. Crouch is obviously associated with Trinity. Moreover, since Mrs. Duff openly acknowledged her participation in preparing many other NMTV documents, like Affiliation Agreements and notes, she obviously was making no effort to "disguise" her involvement.

229. Similarly, even though both Mrs. Duff and Pastor Espinoza testified that they were certain that they spoke and Pastor Espinoza supported the Odessa acquisition prior to NMTV's decision to proceed (TBF Ex. 101, p. 52; TBF Ex. 106, p. 7), Glendale/SALAD claim that Pastor Espinoza could not possibly have been consulted about the Odessa acquisition because (a) a purchase agreement had been drafted by December 22, 1986, while (b) he testified he was not "advised of the Odessa possibility [until] at some point in late 1986 or early 1987." (Glendale PFCL I ¶68.) This argument is frivolous on its face, since the term "late 1986" by definition readily includes periods prior to December 22, 1986. Glendale/SALAD essentially are arguing that both Mrs. Duff and Pastor Espinoza lacked candor because Pastor

Espinoza could not remember a precise date from seven years earlier.

230. Remarkably, in a submission that repeatedly charges others with lack of candor, SALAD urges TBF's disqualification for abuse of process based on the following citation: "Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342 (Rev. Bd. 1988) (subsequent history omitted)." (SALAD PFCL ¶119, emphasis added.) SALAD fails to disclose that, in the subsequent history it omits, the Commission reversed the Review Board decision and found that no abuse of process had occurred. Silver Star Communications-Albany, Inc., 6 FCC Rcd 6905 (1991). The Commission reached that conclusion because, like here, no willful intent to deceive was established. In stating "subsequent history omitted," SALAD admits that it knew the subsequent history in Silver Star but chose not to report it. The Presiding Judge undoubtedly will not wish to rely on a decision that the Commission reversed.[40/]

40/ Besides citing inapposite case law (¶¶34-36, 136-47, 206-07 above), Glendale/SALAD rely on the proffered testimony of Jane Duff in TBF Ex. 101, pp. 61-70. (Glendale PFCL I ¶346; SALAD PFCL ¶¶87, 121.) However, at Glendale's objection, that testimony was excluded from the record. (Tr. 654-55, 657.) While the testimony was offered in good faith and has support in Commission precedent (The Seven Hills Television Company, supra, 2 FCC Rcd at 6877, 6888 (¶¶36, 68)), and while NMTV strongly believes that its proposed findings and conclusions have merit and should be adopted, NMTV has not waited for the outcome of this proceeding before addressing the matters that apparently concerned the Commission in the HDO. Rather, upon seeing that its good faith evidentiary submission was deemed unacceptable, NMTV immediately arranged to meet "shortly after the hearings to see in what ways we can improve our performance and to function better." (Tr. 4043.)

231. To summarize, nothing in this case approaches the serious misconduct that occurred in WWOR-TV. The Bureau has correctly evaluated the record and finds no lack of candor. The indiscriminate candor allegations leveled by Glendale/SALAD are specious and warrant no consideration. Adell Broadcasting Corp., supra.

5. Final Response to Glendale and SALAD

232. As discussed above, SALAD's suggestion that this proceeding should be decided through a comparison to Michael Jackson is frivolous and undignified. Another comparison is more apt. In his epic, Invisible Man, Ralph Ellison depicts the plight of the Negro in America facing whites who profess to know best how he should think and act, and who thereby deny his individuality and render him invisible. Here, Glendale/SALAD would render Jane Duff the invisible woman. They count for nothing that she directs the daily operation of NMTV and has overridden Paul Crouch on significant NMTV policy decisions. And they impugn her because she does not run NMTV the way they apparently think a minority-owned station should be run. The Commission, however, has no such litmus test. Jane Duff is not the invisible woman, and we ask the Presiding Judge in all fairness to so find.

C. Reply to the Mass Media Bureau

1. Erroneous Inference of Abusive Intent

233. Although the Mass Media Bureau correctly concludes that TBN did not abuse process in claiming minority preferences in LPTV applications (MMB PFCL ¶¶304-05), the Bureau errs in finding abuse of process under the multiple ownership rules (Id. ¶303). The Bureau makes that error because it wrongly infers from the evidence that NMTV had the requisite abusive intent. (Id. ¶296.)

234. As the Commission has made clear, and as the Bureau recognizes, abusive intent is an essential element of abuse of process. Evansville Skywave, Inc., 7 FCC Rcd 1699, 1702, n. 10 (1992) ("a conclusion that abuse of process has occurred requires a specific finding, supported by the record, of abusive intent"); MMB PFCL ¶296. Thus, NMTV's applications to acquire the Odessa and Portland stations were not an abuse of process if TBN and NMTV did not intend by those applications to evade the provisions of the multiple ownership rules. Since intent is state of mind, the pivotal question is whether TBN and NMTV believed or understood at the time that what they were doing was impermissible.

235. Implicitly acknowledging the absence of any direct evidence that TBN and NMTV thought they were acting wrongly, the Bureau draws an inference. "Abusive intent," says the Bureau,

"can be inferred from NMTV's grossly inaccurate reading of the Commission's multiple ownership rules...." (MMB PFCL ¶296.) In the same vein, the Bureau asserts that TBN and NMTV were proceeding on a "novel and bizarre legal theory." (Id. ¶310.) This is the sole basis on which the Bureau infers that TBN and NMTV believed they were acting wrongly. The inference is unwarranted.

236. To be sure, the Commission has (in the HDO) rejected the interpretation of the minority ownership policy that Colby May made at the time. However, there was a reasonable basis for his conclusion that NMTV's eligibility depended solely on the composition of its Board of Directors. That is exactly how Commissioner Patrick said he interpreted the policy. In a separate statement accompanying the Commission's adoption of the new rule and policy, Commissioner Patrick asserted:

> "Under the majority's scheme, the right to purchase broadcast stations over the established ceiling turns upon the race of the proposed owners alone. No further showing is required with respect to how these new owners may contribute to diversity. No concern is given to whether the 51% minority owners will exert any influence on the station's programming or will have any control at all."[41/]

Given this contemporaneous interpretation of the rule and policy by a member of the Commission itself, Mr. May was not unreasonable in concluding that composition of the Board was the only criterion the Commission intended. To call that conclusion

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41/ Reconsideration of Multiple Ownership Rules, supra, 100 FCC 2d at 104 (Separate Statement of Commissioner Dennis R. Patrick Dissenting in Part).

"grossly inaccurate" or "novel and bizarre" is to say that Commissioner Patrick too gave the rule and policy a "grossly inaccurate" and "novel and bizarre" interpretation.

237. Also supporting Mr. May's interpretation was the history of the policy. The Bureau in its PFCL overlooks the 1982 Advisory Committee Report, which was the basis for the policy adopted by the Commission in 1985.[42/] Identifying lack of management and technical expertise as two primary impediments to minority ownership, the Advisory Committee recommendations specifically contemplated "a situation where minorities hold a controlling interest while the established operator develops the property." Id., p. 32. See TBF PFCL ¶¶590-600. This was fully consistent with Mr. May's view that the minority ownership policy permitted the established broadcaster to play an active role in the minority company.

238. Furthermore, the rule implementing the minority ownership policy explicitly defined "control" for purposes of the minority exception to the multiple ownership rules: "*Minority controlled* means more than 50 percent owned by one or more members of a minority group." 47 C.F.R. §73.3555(d)(3)(iii). The Commission emphasized that standard when it adopted the rule:

42/ Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission (May 1982) ("1982 Advisory Committee Report").

> "A question arises as to the proper definition of a minority owned station for the purposes of our multiple ownership rules.... In the context of the multiple ownership policies, we believe that a greater than 50 percent minority ownership interest is an appropriate and meaningful standard for permitting increases to the rules adopted herein."[43/]

Moreover, Section 73.3555(d)(1) allowed non-minority broadcasters to have a "cognizable" interest in the minority controlled entity. Mr. May testified that these authorities led him to conclude that TBN could play an active role in NMTV provided a majority of the NMTV Board were minority persons. (TBF PFCL ¶¶229-32.)

239. This was a reasonable conclusion even in light of Note 1 of §73.3555, which provides that "[t]he word *control* as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised." While Note 1 states a general definition for purposes of §73.3555, subsection (d)(3)(iii) gives a much more specific definition of "minority control" for purposes of the minority exception to the multiple ownership rules. As a matter of statutory construction, general language will not be held to apply to a matter specifically dealt with in another part of the same enactment; the specific terms prevail over the general.[44/] Thus, Mr. May could reasonably conclude that the

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[43/] Reconsideration of Multiple Ownership Rules, supra, 100 FCC 2d at 94-95 (¶45).

[44/] Fourco Glass Co. v. Transmirra Prod. Corp., 353 U.S. 228-29 (1957).

Commission intended to define control in this context solely by the composition of NMTV's Board. Indeed, the Bureau agrees that Mr. May was correct in giving that interpretation to the minority preference for LPTV lotteries. (MMB PFCL ¶304-05.)

240. Even if Mr. May's interpretation of the rule proved to be "grossly inaccurate" or unreasonable, there is no evidence that he was in bad faith. To be wrong is not to be dishonest. Gary D. Terrell, 59 RR 2d 1452, 1454 (¶4) (Rev. Bd. 1985) ("carelessness and mistakes of law are entirely different matters from an intent to deceive"). The Bureau points to nothing in the record -- and there is nothing in the record -- showing that Mr. May did not genuinely believe he was interpreting the rule and the policy correctly. Significantly, moreover, the Bureau does not question the sincerity of Mr. May's testimony that --

> "I never thought of it in those contexts, the de facto [context] ... I read this policy and believed that the invitation was to permit the relationship [that] would then evolve, that's the advice I gave. Whether or not it was right or wrong or whether or not it was well-founded, it was the advice I gave, people acted on it and that's why we're here today and literally millions of dollars and hundreds of people's lives have been impacted as a result of what I did." (Tr. 3394.)

In short, rightly or wrongly, Mr. May believed he was construing the law correctly and he believed he was advising his client correctly. There is no valid basis for finding that he acted in bad faith.

241. Finally, assuming arguendo that Mr. May was unreasonable, or even in bad faith (which he was not), that still does not justify a finding via inference that TBN or NMTV had the requisite abusive intent. TBN and NMTV relied on their counsel for legal advice. They had no legal expertise of their own and thus no basis for questioning the validity of Mr. May's legal interpretation of this new Commission rule and policy. If his interpretation was wrong, they could not have known that. If his interpretation was unreasonable as a proposition of law, they could not have known that. If he was advising them in bad faith, they could not have known that. In short, it is a leap to infer without evidence that because counsel was wrong, he had an abusive intent. It is an even greater leap to infer without evidence that because counsel was wrong, the client had an abusive intent. Neither inference is justified.

242. For all of these reasons, the Bureau's position is erroneous. A specific finding of abusive intent on the part of TBN or NMTV cannot properly be inferred from counsel's mistaken reading of the Commission rule and policy. Because there can be no abuse of process unless the applicant had an abusive intent, and because TBN and NMTV did not have an abusive intent when NMTV applied for Odessa and Portland, there was no abuse of process.

2. De Facto Control Issue

243. The Bureau, unlike Glendale/SALAD, has endeavored to address the record evenhandedly. However, its PFCL on the de facto control issue contain several significant omissions and inaccuracies that preclude adoption of those findings and conclusions.

244. Most significant is the Bureau's omission of any reference to the history behind the minority expansion of the multiple ownership limits as set forth in the 1982 Advisory Committee Report. The Advisory Committee recommended that the Commission encourage joint ventures between established broadcasters and minorities in which the established operator would develop the property. (TBF PFCL ¶593.) By not addressing the Commission's adoption of that recommendation, the Bureau proceeds on the erroneous premise that TBN and NMTV have an inherent conflict, when in fact the Commission contemplated that such entities would work closely together. A significant example of this error is MMB PFCL ¶284, where the Bureau states that Paul Crouch could not fulfill his fiduciary responsibilities by executing an Agreement with NMTV on behalf of TBN when he was a principal of both corporations. Yet, the Commission policy and rules specifically authorize established broadcasters to act as officers of both corporations. 47 C.F.R. §73.3555, Note 2(h); TBF PFCL ¶¶596-99. And under California

law, Dr. Crouch's conduct clearly was not a breach of fiduciary responsibility. Cal. Code §9244(a)(2); ¶169 above.

245. At the hearing, the Bureau felt it important to develop facts regarding the relative involvement of Dr. Crouch and Jane Duff for TBN and NMTV, respectively. The Bureau therefore elicited testimony which establishes that Dr. Crouch has significantly less involvement with NMTV than he does with TBN-owned stations. (TBF PFCL ¶33.) Yet, the Bureau omits any reference to that evidence while concluding that TBN and NMTV are the same.

246. Likewise, the Bureau summarily concludes that the work Mrs. Duff performs on behalf of NMTV is simply a part of her routine TBN duties (MMB PFCL ¶286), without addressing those matters where her responsibilities for NMTV are different and greater than her duties for TBN. (TBF PFCL ¶63; ¶¶92-93 above.) Those differences show that TBN and NMTV are not the same, and that NMTV is a minority run company unless Mrs. Duff's status as an individual in her own right is ignored. (¶¶81-105, 232 above.)

247. In this respect, the Bureau also omits important evidence about Mrs. Duff's role in making NMTV decisions. Of particular significance, the Bureau does not address Mrs. Duff's decision with Pastor Espinoza to sell the permit for the Houston station, which Dr. Crouch and TBN wanted to build. (TBF PFCL ¶¶47-53; ¶¶39-52 above.) That action shows that NMTV and TBN

are not the same. Likewise, the Bureau's treatment of Mrs. Duff's decisions and actions concerning the Odessa station (MMB PFCL ¶¶58, 60, 61, 106, 280) is cursory and omits substantial relevant evidence. (TBF PFCL ¶¶40-46, 71, 75, 77-78; ¶¶53-63 above.)

248. During the hearing, the Bureau also felt it important to determine whether the chain of command between NMTV's station engineers and Ben Miller was direct or involved NMTV's station management. (TBF PFCL ¶202.) However, the Bureau now omits any reference to the evidence it adduced on this point (MMB PFCL ¶¶74, 288), which establishes that while Mr. Miller directly supervises TBN station engineers, NMTV station management is directly involved in the chain of command at NMTV stations and Mr. Miller does not supervise NMTV's engineers. (Id., ¶¶171-72 above.) Therefore, TBN and NMTV are different in this material respect as well.

249. Concerning finances, the Bureau at MMB PFCL ¶¶11 and 45 makes an important finding of fact that NMTV also makes at TBF PFCL ¶218. The finding is that NMTV's network revenues are treated differently from the network revenues of TBN-owned stations. Specifically, TBN does not retain control over NMTV's financial revenues, but instead pays them directly over to NMTV for its control. In contrast, TBN does control the network revenues of its owned stations, retains all those revenues itself, and makes disbursements for the stations' benefit only

when and as it determines. The Bureau's conclusions take no account of this significant fact, which clearly shows that TBN and NMTV are not the same. The Bureau thus erroneously concludes that NMTV stations and TBN-owned stations have the same financial modus operandi (MMB PFCL ¶278), when they significantly do not. Since the Bureau and TBF agree on the underlying facts, the findings proposed at TBF PFCL ¶218 and Bureau PFCL ¶¶11, 45 should be adopted together with appropriate conclusions.

250. The Bureau errs in concluding that Dr. Crouch did not need NMTV's corporate documents to contain the same "protections" against his removal as TBN's because he already retained ironclad control over NMTV through Mrs. Duff's position on the Board. (MMB PFCL ¶270.) That conclusion is contradicted by the fact that Mrs. Duff had the exact same relationship to TBN when TBN adopted those protections. Specifically, Mrs. Duff and Dr. Crouch were two of three TBN Directors (a majority) when TBN protected Dr. Crouch, and they were two of three NMTV Directors (a majority) when NMTV did not protect Dr. Crouch. The facts are exactly as set forth at TBF PFCL ¶¶34-39, 47, and ¶¶95-98 above: (a) Dr. Crouch does not control Mrs. Duff; (b) Dr. Crouch focused on controlling TBN; (c) Dr. Crouch did not focus on controlling NMTV.

251. The Bureau's treatment of the evidence regarding Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez is